IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 291 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Applicant(s)
Versus
M/S SHIVAM MEDICAL STORES, & 2 - Respondent(s)

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Appearance :
Ms. Nandini Joshi, Addl. PUBLIC PROSECUTOR for the applicant.
MR MANISH J PATEL for the Respondents.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 01/09/2006

ORAL JUDGMENT

The present Revision Application has been preferred against the order dated 28th March, 2001 below application exh. 16 in Criminal case no. 1273 of 1994 passed by the learned Judicial Magistrate, First Class, Gandhinagar, whereby the complaint filed by the applicant has been dismissed and the respondents-accused persons have been acquitted mainly for the reason that the applicant could not remain present and in view of the judgment delivered by the Hon'ble Supreme Court in the case of **Rajdeo Sharma(II) vs. State of Bihar reported in (1999) 7 SCC, 604.**

2. I have heard the learned Additional Public Prosecutor for the applicant State who has submitted that the judgment delivered by the Hon'ble Supreme Court in the case of Rajdeo Sharma (II) vs. State of Bihar, reported in (1999) 7 SCC, 604 has been overruled by the subsequent judgment delivered by the Hon'ble Supreme Court in the case of **P.Ramachandra Rao vs. State of Karnataka reported in (2002) 4, SCC, 578 (para-28).** In view of this position, the order passed by the trial court deserves to be quashed and

set aside. It is also stated by the learned APP that even as per the earlier judgment of Rajdeo Sharma (II) (Supra), period of two years ought to have been reckoned from the date of recording plea of the accused. In the present case, the plea was recorded on 12th January,2000 and therefore, the Court ought to have waited for two years from 12th January, 2000, whereas the impugned order passed on 28th March, 2001 and therefore also, the order passed by the trial court deserves to be quashed and set aside. It is stated by the learned Additional Public Prosecutor that the complainant shall remain present if the matter is remanded by quashing the order passed by the learned Judicial Magistrate, First Class, Gandhinagar. The complaint was filed by the Drugs Inspector for the violation of The Drugs and Cosmetics At, 1940. The said complaint is at Annexure “B” to the memo of the present compilation. Several irregularities have been committed by the respondents-accused. More than one dozen breaches have been pointed out in the complaint filed under The Drugs and Cosmetics Act, 1940. Hence, the complainant shall remain present before the trial

court. Looking to the latest judgment passed by the Hon'ble Supreme Court reported in the case of **P. Ramachandra Rao vs. State of Karnataka, reported in (2002) 4 SCC, 578,** the impugned order passed by the trial court deserves to be quashed and set aside.

3. I have also heard the learned advocate for the respondents-accused who has mainly submitted that enough time has elapsed after filing of the complaint and nobody is remaining present from the side of the complainant. Every time, the respondents remain present and therefore, an application was given in pursuance of the judgment delivered by the Hon'ble Supreme Court in the case of Rajdeo Sharma (II) vs. State of Bihar reported in (1999) 7 SCC and as the case was not completed within two years, the impugned order has been passed by the learned Judicial Magistrate, First Class, Gandhinagar. It is also submitted by him that no offence as alleged by the original complainant has ever been committed by them and therefore, this Court may not interfere with the order passed by the trial court in revisional jurisdiction.

4. Having heard the learned Additional Public Prosecutor for the State and the learned advocate for the respondent and looking to the facts and circumstances of the case, in my view, the impugned order dated 28th March, 2001 below exh. 16 in Criminal case no. 1273 of 1994 deserves to be quashed and set aside mainly for the following reasons:

(i)It appears that the learned trial Magistrate has not properly appreciated that as per the judgment delivered by the Hon'ble Supreme Court in the case of Rajdev Sharma(II) (Supra), two years' period ought to be calculated from the date of recovery of recording of the plea of the accused. Looking to the facts of the present case, it appears that the plea of the accused was recorded on 12th January, 2000 and therefore, the order of dismissal of the complaint ought not to have been passed by the trial court before the period of two years from 12th January, 2000. The impugned order is dated 28th March, 2001.

(ii) It is rightly stated by the learned

Additional Public Prosecutor that the judgment delivered by the Hon'ble Supreme Court in the case of **Rajdeo Sharma (II) (Supra)** has been overruled in the latter judgment of the Hon'ble Supreme Court in the case of **P. Ramchandra Rao vs. State of Karnataka reported in (2002) 4 SCC, 576.** Thus, no hard and fast time bound schedule can be given to the trial court in view of the judgment delivered in the case of **Abdul Raheman Antule reported in 1992 (1) SCC, 225** and several judgments which are referred to in 2002(4) SCC, 578. It is assured by the learned Additional Public Prosecutor that the complainant shall remain present before the trial court and shall proceed with the criminal case No. 1273 of 2004. In view of these facts, reasons and judicial pronouncements, the impugned order dated 28th March, 2001 below exh. 16 in Criminal case no. 1273 of 1994 is hereby quashed and set aside. The case is remanded to the trial court for its fresh hearing and decision. The learned Judicial Magistrate, First Class, Gandhinagar is hereby directed to hear and decide criminal case no.

1273 of 1994 as early as possible and practicable and preferably or or before 31st December, 2006 as the case is of the year 1994. The applicant State is directed to see to it that the original complainant remains present before the rial court and shall proceed with the criminal case no. 1273 of 1994. Rule made absolute accordingly.

(D.N.Patel,J)

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